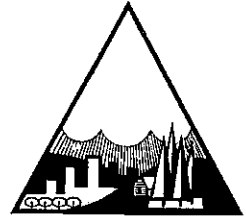


MEMORANDUM
CITY OF TIGARD, OREGON



TO: Honorable Mayor and City Council

FROM: Cathy Wheatley, City Recorder *Cathy*

DATE: December 19, 2005

SUBJECT: Supplemental Packet – Sunrise Annexation Material for December 20, 2005
City Council Meeting; Agenda Item No. 5

Attached are the following materials for the above-referenced Council agenda item:

- ☒ Draft ordinance – without an emergency clause
 - Exhibit A – Legal Description
 - Exhibit B – Map
 - Exhibit C – Map
 - Exhibit D – Staff Report with Findings attached
- ☒ Draft ordinance – with an emergency clause
 - Exhibit A – Legal Description
 - Exhibit B – Map
 - Exhibit C – Map
 - Exhibit D – Staff Report with Findings attached
- ☒ December 14, 2005 Letter from Applicant's Attorney Michael Robinson constituting the applicant's submittal prior to the close of the second open record period ending on December 14, 2005 at 5 p.m.
- ☒ December 15, 2005 Letter from Applicant's Attorney Michael Robinson as the applicant's final argument in support of the annexation proposal.

CITY OF TIGARD, OREGON

Draft Ordinance without
emergency clause

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 25.61 ACRES, APPROVING SUNRISE LANE ANNEXATION (ZCA2005-00004), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on October 25, 2005 to consider the annexation of twelve (12) parcels of land consisting of 25.61 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on October 25, 2005 on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibits "B"** and **"C"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 2: The City adopts the Findings in the Revised Staff Report (December 19, 2005) and the City Council Findings Regarding Annexation Proposal ZCA2005-00004 (**Exhibit "D"**).

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

APPROVED: By Tigard City Council this _____ day of _____, 2005.

Catherine Wheatley, City Recorder

Craig Dirksen, Mayor

Approved as to form:

City Attorney

Date

BEING TRACTS OF LAND AS DESCRIBED IN THE FOLLOWING DOCUMENTS: 98-070527, 2003-020130, 2000-061432, 2004-107939, BOOK 1151, PAGE 113, 2004-082311, 2004-082312, AND 97-084282 ALL WASHINGTON COUNTY DEED RECORDS, SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, IN COUNTY OF WASHINGTON, STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE SOUTHEAST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DOCUMENT NO. 97-084282 OF SAID COUNTY, SAID SOUTHEAST CORNER BEARS NORTH 89° 50' 44" WEST, 571.41 FEET ALONG THE SOUTH LINE OF SAID SECTION 5 AND NORTH 00° 41' 42" EAST, 20.00 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 5 MARKED WITH AN ALUMINUM DISC IN CONCRETE; THENCE ALONG A LINE 20.00 FEET PARALLEL WITH THE SAID SOUTH SECTION LINE NORTH 89° 50' 44" WEST, 212.89 FEET; THENCE SOUTH 00° 41' 42" WEST, 20.00 FEET TO A POINT ON SAID SOUTHERLY SECTION LINE; THENCE ALONG SAID SOUTH SECTION LINE NORTH 89° 50' 44" WEST, 233.64 FEET; THENCE LEAVING SAID SECTION LINE RECORDS NORTH 00° 43' 00" EAST, 200.00 FEET; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT NORTH 89° 50' 44" WEST, 124.00 FEET; THENCE ALONG THE WESTERLY LINE OF SAID TRACT SOUTH 00° 43' 00" WEST, 180.00 FEET TO A POINT (20.00 FEET NORTHERLY OF, WHEN MEASURED PERPENDICULAR TO SAID SECTION LINE); THENCE ALONG A LINE PARALLEL WITH THE SAID SECTION LINE NORTH 89° 50' 44" WEST, 180.00 FEET; THENCE NORTH 00° 43' 00" EAST, 20.00 FEET; THENCE NORTH 89° 50' 44" WEST, 23.33 FEET; THENCE SOUTH 00° 43' 00" WEST, 40.00 FEET TO A POINT ON THE SOUTH SECTION LINE; THENCE ALONG SAID SOUTH SECTION LINE NORTH 89° 50' 44" WEST, 107.00 FEET; THENCE NORTH 00° 41' 34" EAST, 240.00 FEET TO A POINT ON THE SOUTHERLY LINE OF THAT TRACT DESCRIBED IN DEED BOOK 397, PAGE 547, WASHINGTON COUNTY DEED RECORDS; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89° 50' 44" EAST, 42.89 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE ALONG THE EASTERLY LINE OF SAID TRACT OF NORTH 00° 40' 00" EAST, 399.80 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE LEAVING SAID NORTHEAST CORNER OF SAID TRACT SOUTH 89° 50' 28" EAST, 85.62 FEET TO THE SOUTHEAST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DOCUMENT NO. 2004-046173 OF SAID COUNTY; THENCE ALONG THE EAST LINE OF SAID TRACT, NORTH 00° 43' 00" EAST, 161.26 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 79° 30' 00" WEST, 243.12 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SUNRISE LANE (BEING 20.00 FROM THE CENTERLINE THEREOF, WHEN MEASURED PERPENDICULAR THERETO); THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) CALLS: NORTH 14° 15' 05" WEST, 98.41 FEET; THENCE NORTH 17° 04' 55" EAST, 72.15 FEET; THENCE NORTH 43° 11' 55" EAST, 116.47 FEET; THENCE NORTH 04° 35' 55" EAST, 84.20 FEET TO THE NORTHWEST CORNER OF THAT TRACT DESCRIBED IN DEED RECORD BOOK 186, PAGE 307; THENCE ALONG THE SOUTHERLY LINE OF THAT TRACT DESCRIBED IN DEED DOCUMENT NUMBER 2002-019693, WASHINGTON COUNTY DEED RECORDS SOUTH 89° 28' 42" EAST, 699.75 FEET TO THE NORTHEAST CORNER OF THAT TRACT DESCRIBED IN DEED RECORD BOOK 861, PAGE 211; THENCE ALONG THE WESTERLY LINE OF THAT CERTAIN TRACT OF LAND AS DESCRIBED IN DOCUMENT NO. 2001-085039 ALONG THE FOLLOWING FIVE (5) COURSES: SOUTH 00° 41' 42" WEST, 393.64 FEET; THENCE NORTH 89° 50' 44" EAST, 100.00 FEET; THENCE SOUTH 00° 41' 42" WEST, 480.00 FEET; THENCE NORTH 89° 50' 44" EAST, 112.90 FEET; THENCE SOUTH 00° 41' 42" WEST, 280.00 FEET TO SAID POINT OF BEGINNING.

CONTAINS 19.638 ACRES, MORE OR LESS.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
NOV. 16, 1998
MICHAEL D. FRANK
53854

Including Tax Lot 600

Escrow No. 08-838878-1 FB-28
Title Order No. 00838878

Beginning at a point North 89°49' West, 1409.7 feet and 640 feet North 0°43' East of the Southeast corner of Section 5, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, being the Northeast corner of a tract conveyed to Fletcher Rockwood, et ux, by Deed recorded September 7, 1957, in Book 397, Page 547, Deed Records; thence South 89°44'17" East along the Easterly projection of the North line of said Rockwood Tract, 85.83 feet; thence North 0°43' East, 160 feet; thence North 79°30' West 225.74 feet to the Easterly right-of-way line of Sunrise Lane; thence South 14°18' East, 90 feet and South 4°14'45" West, 119.8 feet to the North line of said Rockwood Tract; thence South 89°44'17" East, 142.17 feet to the place of beginning.

Order No: 267915

Including Tax Lot 700

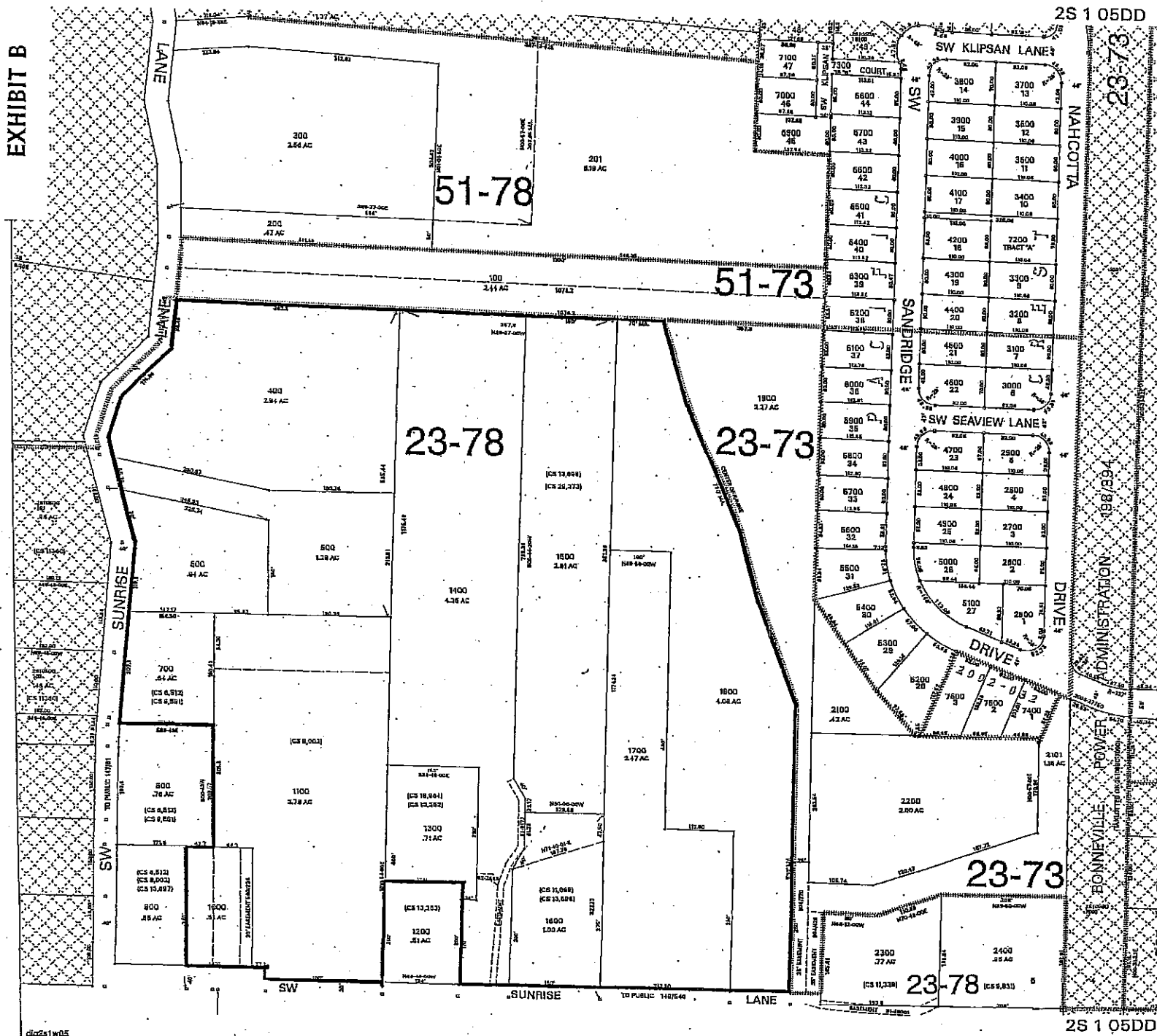
A tract of land in the Southeast one-quarter of Section 5, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

BEGINNING at an iron pipe set North 89°49' West 1409.7 feet and North 0°43' East 449.57 feet from the Southeast corner of Section 5, Township 2 South, Range 1 West of the Willamette Meridian; running thence North 89°49' West a distance of 171.09 feet to a point on the center line of a 40 foot roadway described on Page 81 of Book 147, Washington County, Oregon, Deed Records, from which an iron pipe bears South 89°49' East, a distance of 20.05 feet; thence North 4°12' East along the center line of said 40 foot wide roadway a distance of 190.90 feet to the Northwest corner of tract described in Deed to Elton C. Phillips, et ux, recorded in Book 473, Page 227, Deed Records of Washington County, Oregon, from which an iron rod bears South 89°49' East a distance of 20.00 feet; thence South 89°49' East a distance of 159.5 feet to an iron rod; thence South 0°43' West a distance of 190.43 feet to the point of beginning, except that portion lying in Sunrise Lane.

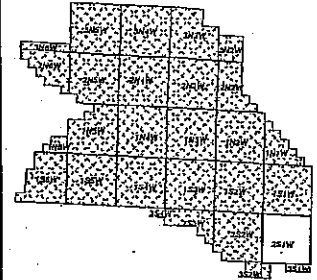
Including Tax Lot 1800

A tract of land located within the southeast one-quarter of Section 5, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, being more particularly described as follows:

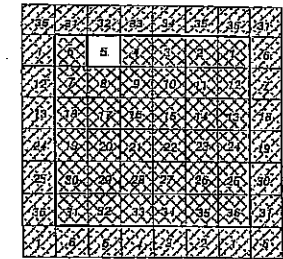
Commencing at the corner to section 4, 5, 8, and 9, Township 2 South, Range 1 West W.M.; thence N 89° 50' 44" W a distance of 451.8 feet; thence N 00° 56' 42" E a distance of 20.00 feet to the True point of Beginning; thence N 00° 56' 42" E a distance of 530 to the center of the ravine; thence N 22° 25' 19" W, along the center of the ravine, a distance of 750 more or less; thence N 89° 28' 42" a distance of 70 feet more or less; thence S 00° 41' 42" W a distance of 393.64 feet; thence S 89° 50' 44" E a distance of 100 feet; thence S 00° 41' 42" W a distance of 480 feet; thence S 89° 50' 44" E a distance of 112.90 feet; S 00° 41' 42" W a distance of 280 feet; thence S 89° 50' 44" E a distance of 120 feet to the true point of beginning.



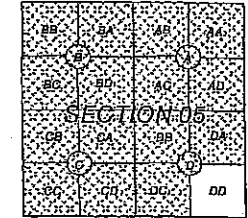
2S 1 05DD



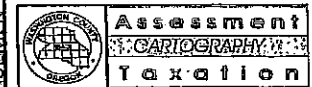
WASHINGTON COUNTY OREGON
SE1/4 SE1/4 SECTION 05 T2S R1W W.M.
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us



Cancelled Taxlots For: 2S105DD
101,201,202,2500



PLOT DATE: January 22, 2004
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE

Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

TIGARD
2S 1 05DD

EXHIBIT C



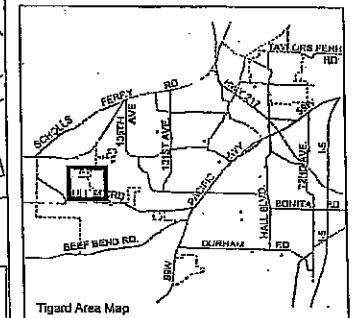
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

=====
ZCA2005-00004
=====

SUNRISE LANE ANNEXATION



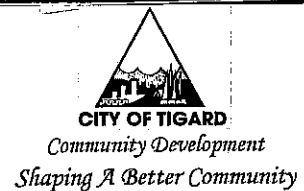
0 200 400 600 Feet

1" = 412 feet



Information on this map is for general location only and
should be verified with the Development Services Division.
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>

**REVISED STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



SECTION I. APPLICATION SUMMARY

FILE NAME:	SUNRISE LANE ANNEXATION	
CASE NO.:	Zone Change Annexation (ZCA)	ZCA2005-00004
APPLICANT:	DR Horton, Inc. - Portland c/o J/T Smith Companies 4386 SW Macadam, Suite 102 Portland, OR 97239	APPLICANT'S REP.: WRG Design, Inc. 5415 SW Westgate Drive Portland, OR 97221
OWNER:	Angelo and Rosina Cortese 15175 SW Sunrise Lane Tigard, OR 97224	OWNER: Dwight and Paula Cash 14885 SW Sunrise Lane Tigard, OR 97224
OWNER:	James L Corliss PO Box 23970 Tigard, OR 97224	OWNER: Leslie and Carol Inman 15630 SW Greens Way Tigard, OR 97224
OWNER:	Providence Newberg Health Foundation 25300 Lone Oak Street Hillsboro, OR 97123	OWNER: Steven and Joan Nelson 14775 SW Sunrise Lane Tigard, OR 97224
OWNER:	Patricia Marshall 14765 SW Sunrise Lane Tigard, OR 97224	OWNER: Richard & Michelle Crombie 15165 SW Sunrise Lane Tigard, OR 97224
OWNER:	Jennifer & Leighton Walsh 15169 SW Sunrise Lane Tigard, OR 97224	
PROPOSAL:	The applicant is requesting annexation of nine (9) parcels containing 19.95 acres into the City of Tigard. An additional adjacent 5.66 acres has been included by means of consent by Patricia Marshall, Michelle Crombie and Leighton Walsh. Therefore, this annexation is for twelve (12) parcels totaling 25.61 acres.	
CURRENT ZONING DESIGNATION:	R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.	
LOCATION:	North of Bull Mountain Road at 150 th and Sunrise Lane; WCTM 2S105DD Tax Lots 400, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1600, 1700 and 1800.	

**APPLICABLE
REVIEW
CRITERIA:**

Community Development Code Chapters 18.320 and 18.390;
Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and
ORS Chapter 222.

NOTE: In this revised staff report, deletions are indicated by ~~strikethrough~~
and additions are highlighted.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance ~~and consideration of the addition of the Sunrise Lane right-of-way where it abuts the subject parcels.~~

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:

A parcel that is contiguous to the city limits may apply for annexation at any time. The City requires that an applicant or property owner annex the property before submitting a land use application. The applicant/owner, DR Horton, has not applied for subdivision review at this time, pending approval of the proposed annexation. The total area represented in the applicant's annexation request is 19.95 acres comprised of nine (9) parcels, three of which are contiguous to the present city limits along their northern boundaries. Three additional parcels, totaling 5.66 acres, located adjacent to the lots in the proposed annexation have been included by means of consents by Patricia Marshall, Michelle Crombie and Leighton Walsh. Therefore, this annexation is for twelve (12) parcels totaling 25.61 acres.

NOTE: ~~It is the City's practice to annex all rights-of-way adjacent to parcels being annexed. The right-of-way for Sunrise Lane was inadvertently omitted in the proposed boundary description and accompanying map. As this was discovered after notice had been sent, the Council should consider, under consultation with the City Attorney, adding the right-of-way of Sunrise Lane where it abuts the subject parcels.~~

Vicinity Information:

The subject properties are located North of Bull Mountain Road at 150th and Sunrise Lane; including Tax Lots 400, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1600, 1700 and 1800, WCTM 2S105DD.

CONTINUATION OF CITY COUNCIL HEARING

At their October 25, 2005 Council meeting, at the request of opponents of the proposed annexation, City Council agreed to continue the hearing until November 22, 2005 and accept additional testimony. At the November 22, 2005 Council meeting, at the request of the parties, Council agreed to reopen the record to allow additional argument and evidence on the Tigard Comprehensive Plan Policies 10.1.1.a and 10.1.2.e and Community Development Code 18.320.020.B. Additionally, the parties agreed to a schedule for Arguments by December 7th, Rebuttal by December 14th, Applicant's Statement by December 15th, a revised staff report by December 19th, and continuation of the public hearing on December 20, 2005.

Staff has reviewed the additional testimony, argument and evidence submitted by the applicant and opponents. Additionally, staff has reviewed the City Council Findings Regarding Annexation Proposal ZCA2005-00004 (attached) provided by the applicant and finds that they are consistent with the findings in this staff report.

The issues raised by the opponents, as itemized in the November 1, 2005 letter to the Council from Lawrence Derr, attorney for the opponents, include the inability of the City to provided services to the subject property, the applicability of the Bull Mountain Community Plan to annexed territory, and the legitimacy of the property owner consents to annex. Staff finds that these issues have been satisfactorily addressed in the materials submitted by the applicant including the City Council Findings Regarding Annexation Proposal ZCA2005-00004.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since September 9, 2005.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Staff finds that there are two roads to the subject property (SW 147th Terrace and SW 150th Avenue), a 6" water line in SW 150th Avenue to Sunrise Lane, no sewer lines to the subject parcels, and drainage on the site presently provided by two natural drainageways. Before the land is developed at its designated capacity of 7 units to the gross acre, the subdivision review will require that adequate facilities are available and upsized if necessary to handle the development. By providing this infrastructure, the site will have adequate service capacity. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a non-remonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

Staff finds that no L.I.D's currently encumber the subject parcels. All public infrastructure listed above will have to be completed before the land is subdivided by a subdivision plat. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no non-remonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Sunrise Lane. All future lots within the subdivision will be inside city limits. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code

Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential development will be reviewed and conditioned as necessary as part of the Sunrise Lane subdivision review. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions will be addressed at the time the property develops. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. (The R-7 zoning designation is consistent with the original Washington County's R-6 zoning

designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

(See table on the following page)

TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial■

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

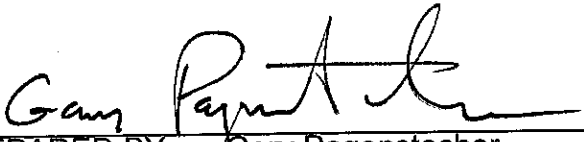
Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00004 – SUNRISE LANE ANNEXATION.


PREPARED BY: Gary Pagenstecher
Associate Planner

December 19, 2005
DATE


APPROVED BY: Richard Bewersdorff
Planning Manager

December 19, 2005
DATE

CITY OF TIGARD, OREGON
CITY COUNCIL FINDINGS REGARDING ANNEXATION PROPOSAL
ZCA2005-00004

I. Introduction

DR Horton, Inc. (the "Applicant") applied to the City of Tigard (the "City") requesting that the City annex nine (9) parcels totaling 19.95 acres. An additional three (3) parcels were added to the application based on the consent of the property owners, bringing the total annexation area, including abutting right of ways, to twelve (12) parcels totaling 25.61 acres (the "Property"). The Property abuts the current city limits and already carries the City's R-7 zoning designation pursuant to Washington County Development Code Section (WCCDC) 801-7.4 and the Tigard Urban Services Agreement with the County (the "TUSA"). All of the owners in fee of the Property, as well as all of the electors on the Property but one, have voluntarily consented to the proposed annexation (the "Annexation").

The Property consists of Tax Lots 400, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1600, 1700 and 1800 on Washington County Tax Map 2S105DD. These parcels are located north of Bull Mountain Road at 150th and Sunrise Lane.

II. Approval Criteria and Findings

The City Council hereby incorporates by reference the proposed findings contained in the Staff Report to the City Council for the City of Tigard, Oregon re: Sunrise Lane Annexation, dated October 25, 2005, and the Revised Staff Report, dated December 19, 2005, except to the extent that those proposed findings are inconsistent with the findings set out below. Where there is a conflict, these findings shall control.

A. Tigard Community Development Code Section 18.320.020

B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

- 1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and*

Finding: City Council finds that this criterion is satisfied. There is substantial evidence in the record that all services and facilities are available to the area and have sufficient capacity to provide service to the Property. The evidence is summarized below in Section II.C.

2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Finding: City Council finds that this criterion is satisfied. The analysis and evidence referenced in Section II.C. below are incorporated into this finding by reference.

3. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

Finding: The Council finds that this criterion is satisfied. The Property is currently subject to Article VIII of the WCCDC, which replaced the County's comprehensive plan and zoning designations with the "functionally equivalent zoning districts and plan designations of the City of Tigard" for property in the Bull Mountain Community Plan area. WCCDC 801-7.4. The Property thus already carries the City of Tigard's comprehensive plan and R-7 zoning designations, and Applicant has not proposed to modify either designation. Therefore, this annexation will not involve a change in the comprehensive plan or zoning designation of the Property. The conversion required by this criterion has, therefore, already occurred and the criterion is satisfied.

B. METRO Code Section 3.09.050(d)

An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:

1. *(1) Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;*

Finding: City Council finds that this criterion is satisfied. The City of Tigard is a party to the Tigard Urban Services Agreement dated November 26, 2002 (the "TUSA"), which was adopted pursuant to ORS 195.065. The record contains a copy of the TUSA. The Property lies within the Urban Services Area defined in that agreement on Map A. Section I.D. of the TUSA provides that:

"The CITY and COUNTY will be supportive of annexations to the CITY over time. The CITY shall endeavor to annex the unincorporated areas shown on Map A, in keeping with the following schedule:

1. Near to mid-term (3 to 5 years): Bull Mountain area and unincorporated lands north of the Tualatin River and South of Durham Road, and. . ."

The Property to be annexed abuts the City of Tigard, is unincorporated area shown on Map A, and is part of the Bull Mountain area. The Annexation is thus entirely consistent with, and anticipated by, the directly applicable provisions of the TUSA.

2. *(2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065 between the affected entity and a necessary party;*

Finding: City Council finds that this criterion is satisfied. The City of Tigard and Washington County are parties to an Urban Planning Area Agreement which was fully executed on July 8, 2004 (the "UPAA"). The UPAA implements the requirement of the TUSA that the City and County coordinate and make consistent their comprehensive plan. UPAA Section III. C. sets out the policies governing annexations in the TUSA. Specifically, the UPAA recognizes the City of Tigard as the "ultimate local governance provider to all of the territory in the [TUSA]." It expresses the City and County's desire to transfer County services to the City in an orderly fashion in order to avoid interruption or diminishment of services. Section III.

C. 2. As set out in Section II.C. below, to the extent services are not already being provided to the Property by the City, all necessary services are available to meet the needs of the Property and to provide orderly transitions without interruption or reduction in service. The UPAA also expresses a preference for annexations conducted pursuant to annexations plans, but expressly allows the "CITY and property owners to annex properties using the other provisions provided by the Oregon Revised Statutes." Section III. C. 3. This Annexation is proceeding consistent with the requirements of ORS 222.170. See below in Section II.D. The Annexation is, therefore, consistent with the UPAA. There are no other urban planning agreements or agreements with applicable criteria, other than perhaps the City's Comprehensive Plan and the TCDC, and their requirements are satisfied by this Annexation. See Sections II.A. and II.C.

3. *(3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;*

Finding: City Council finds that this criterion is satisfied. The Annexation complies with all applicable standards and criteria for boundary changes contained in the Comprehensive Plan and any public facility plans. The arguments and evidence contained in Section II.C. are incorporated into this finding by reference.

4. *(4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;*

Finding: City Council finds that this criterion is satisfied. The City of Tigard has amended its development code to comply with all applicable Metro Functional Plan requirements. Therefore, because the annexation complies with the TCDC and Comprehensive Plan requirements for annexations, the annexation is consistent with the Regional Framework Plan and Functional Plan .

5. *(5) Whether the proposed change will promote or interfere with the timely, or orderly and economic provision of public facilities and services;*

Finding: City Council finds that the Annexation will promote the orderly and economic provision of public facilities and services. As expressly recognized by the parties to the TUSA and UPAA, the City of Tigard is the preferred provider of urban services to the Property. The TUSA calls for Washington County to "focus its energies on those services that provide county-wide benefit and [to] transition out of providing municipal services," and recognizes that those services are property provided by "cities and special services districts." TUSA Section I.F. The City of

Tigard already provides certain services to the Property, including planning and permitting services, and as demonstrated below in Section II.C., the City can efficiently and effectively provide the remaining public facilities and services to the Property.

6. *(6) The territory lies within the Urban Growth Boundary;
and*

Finding: City Council finds that this criterion is satisfied. The Property lies within the City of Tigard's Urban Growth Boundary (the "UGB").

7. *(7) Consistency with other applicable criteria for the
boundary change in question under state and local law.*

Finding: City Council finds that this criterion is satisfied. Compliance with all local annexation requirements is demonstrated in Sections II.A. and II.C. Compliance with state law governing annexations is demonstrated in Section II.D.

8. *(e) When there is no urban service agreement adopted pursuant to ORS 195.065 that is applicable, and a boundary change decision is contested by a necessary party, the approving entity shall also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of Section 3.09.050(d) and (g).*

Finding: City Council finds that this criterion is not applicable to the annexation because the Property is subject to an urban services agreement adopted pursuant to ORS 195.065.

C. Tigard Comprehensive Plan Section 10.1.1 and 10.1.2

10.1.1 Prior to the annexation of land to the City of Tigard:

- a. *The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed*, and will not significantly reduce the level of the services available to developed and undeveloped land within the City of Tigard. The services are:*

...

** The most intense use allowed by the conditions of approval, the zone or the Comprehensive Plan."*

Interpretation: As a preliminary matter, City Council interprets the term "capacity" as used in this Policy to mean that the system of providing the services at issue is capable of providing the services. In some cases, this may mean that some components of the service are not presently in place but can and will be added before development. For example, local distribution lines and local streets throughout an area to be annexed do not need to be in place to determine that the water or transportation system is adequate. What is needed is that the overall system is adequate and that the addition of local lines or any necessary upgrades will occur before development and will not burden the overall system to the point that the level of service to other properties is significantly reduced.

This interpretation is consistent with the rest of the sentence, which refers to "such services to be made available." This makes it clear that additional portions of the service system may be added and do not have to be presently in place, so long as the system is expected to be in place by the time of development.

To interpret this policy as requiring that all portions of every system be physically in place at the time of development would be inconsistent with the overall approach to annexation demonstrated in the comprehensive plan. That overall approach is that urbanization is to occur in an orderly fashion, with development occurring in annexed areas, not in unincorporated areas. Requiring all portions of all systems to be in place would preclude annexation, contrary to the overall intent of the Comprehensive Plan, which is to provide for orderly annexation.

This interpretation is consistent with the other provisions of the Comprehensive Plan. Policy 10.1.1.b provides that annexation applicants may be required to agree to local improvement districts. This policy anticipates that some portions of the required systems will be provided after annexation but before development. Interpreting Policy 10.1.1.a to require all portions of service systems to be in place prior to annexation would make Policy 10.1.1.b meaningless.

1. *Water;*

Finding: City Council has reviewed the evidence and finds that, with respect to the capacity to provide water, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 zone shall be allowed on the Property. The Property is now and will continue to be zoned R-7, medium-density residential, with 5,000 square foot minimum lot sizes. In a December 6, 2005 letter signed by

Agustin Duenas (the "Duenas Letter"), City Engineer for the City of Tigard, Mr. Duenas states:

"The City will provide water service to the area to be annexed. The City has an adequate water supply and the overall infrastructure to provide water service to the area to be annexed without significant reduction in the level of service to existing customers. It also has the capacity to provide any additional lines that may be needed to provide service when the annexed properties are developed. ... The water system does have adequate capacity to serve the property to be annexed to the most intense use allowed without significantly reducing the level of services available to developed and undeveloped land within Tigard."

In addition, the record contains a December 6, 2005 letter from Rich Boyle, Project Manager for the applicant with WRG Design, Inc. (the "Boyle Letter"). Mr. Boyle's letter states in part: "The City has determined that it can provide services to this site and doing so will not significantly reduce the level of services to developed and undeveloped land within the City of Tigard."

2. *Sewer;*

Finding: City Council has reviewed the evidence and finds that, with respect to the capacity to provide sewer services to the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 zone shall be allowed on the Property. In a December 5, 2005 letter from Terry Keyes (the "Keyes Letter"), Development Services Manager for Clean Water Services ("CWS"), Mr. Keyes notes that once a parcel is annexed, service is transferred from CWS to the applicable City. The Keyes Letter further notes the relevant sanitary sewer's capacity to serve the annexation site under the proposed zoning district. The Duenas letter states that: "... The City is capable of determining what additional facilities will be required and of administering all portions of the retail sanitary sewer system, both existing and future additions in the area to be annexed, without significant reduction to the level of services provided to properties in the City."

3. *Drainage;*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet drainage needs for the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 zone shall be allowed on the Property. The Keys Letter states that capacity of drainage systems serving the site should not be an issue for the proposed annexation. The Duenas Letter states that: "The retail system has the capacity to provide adequate storm drainage without significant reduction to the level of services provided to

developed and undeveloped properties in the City." The Boyle Letter states: "... capacity of the drainage system serving the site should not be an issue for this proposed annexation."

4. *Streets;*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet street services for the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 shall be allowed on the Property. In a December 2, 2005 memorandum from Julia Kuhn of Kittelson & Associates (the "Kittelson Memorandum"), Ms. Kuhn evaluates the traffic capacity of the area surrounding the Property and concludes that: "There is sufficient infrastructure to accommodate the proposed parcel at maximum buildout and the annexed parcel will not create degrade the level of service provided at any impacted intersection." It is also the case that prior to the development of the Property, subdivision review will require a demonstration that adequate transportation facilities are available or will be made available if necessary to handle the development.

5. *Police; and*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet the policing needs of the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in the R-7 zone shall be allowed on the Property. In a December 2, 2005 letter from Chief William Dickinson (the "Dickinson Letter"), Chief Dickinson's states in part: "The City of Tigard Police Department has determined that it has adequate services to serve the most intense use allowed and that providing services will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard."

6. *Fire Protection.*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet the fire protection needs of the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in the R-7 zone shall be allowed on the Property. In a November 21, 2005 letter from Eric T. McMullen, Deputy Fire Marshal with the Tualatin Valley Fire & Rescue District, Mr. McMullen's states that the District currently provides services to the entire Bull Mountain area, both inside and outside of the City of Tigard and that they have sufficient personnel and equipment to provide services to developed and undeveloped land within the City.

10.1.2 Approval of proposed annexations of land by the City shall be based on findings with respect to the following:

7. a. The annexation eliminates an existing "Pocket" or "Island" of unincorporated territory; or

Finding: City Council finds that the annexation does not eliminate an existing "Pocket" or "Island" of unincorporated territory, but that the annexation satisfies the requirements of b-e below and therefore is consistent with Comprehensive Plan Section 10.1.2.

8. b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;

Finding: City Council has reviewed the map of the proposed annexation area and finds that annexing the Property to the City of Tigard will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City. The Dickinson Letter evidences the Tigard Police Department's conclusion that it has adequate capacity to serve the Property. This criterion is satisfied.

9. c. The police department has commented on the annexation;

Finding: City Council finds on the basis of the Dickinson letter that this criterion is satisfied.

10. d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;

Finding: City Council finds, based on the maps of the Property included in the record, and the City's planning documents, that the Property is contiguous to the City's current boundary and that it is within the Tigard Urban Planning Area.

11. e. The annexation can be accommodated by the services listed in 10.1.1(a).

Finding: City Council finds that this criterion is satisfied and incorporates by reference the evidence cited in findings C 1-6 above.

D. Compliance with State Law

1. Consistency with the statewide planning goals;

Finding: City Council finds that this Annexation is consistent with the Statewide Planning Goals (the "SPGs"), as implemented through the Comprehensive Plan and TCDC. OAR 660-014-0060 provides that "[a] city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) or 197.625 shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinances do not control the annexation." The City's Comprehensive Plan has been acknowledged by the Department of Land Conservation and Development. As the criteria set out in these findings demonstrate, the Annexation is controlled by the Comprehensive Plan and TCDC. And, as further demonstrated by these findings, the Annexation complies with the criteria set out in the Comprehensive Plan. See Sections II.A. and II.C.

2. Consistency with the state statutes governing consents to annexation.

Finding: City Council finds that the Annexation has occurred in compliance with all applicable consent provisions of the Oregon Revised Statutes. The City Council elected not to submit the Annexation to the electorate, as permitted by ORS 222.120 and ORS 222.170, because, as the record reveals, a majority of the electors registered in the territory proposed to be annexed consented in writing to annexation and the owners of more than half the land comprising the Property consented as well, in accordance with the requirements of ORS 222.170(2). City Council also notes that based on the evidence in the record, this annexation satisfies both forms of double majority annexation and the triple majority annexation provision contained in ORS 222.170(1).

III. Response to Opposition Arguments

A. The Bull Mountain Community Plan

Opponents have objected that the proposed annexation is inconsistent with and amounts to a repeal of the Bull Mountain Community Plan (the "BMCP"), which currently imposes certain development and use restrictions on the Property. They contend that the Washington County Development Code expressly makes the BMCP applicable to the Property, notwithstanding the fact that it otherwise adopts the City of

Tigard's comprehensive plan and zoning designations for the area. They contend that the terms of the annexation must be consistent with the requirements of the BMCP.

Finding: City Council finds that these objections are not well taken. The City of Tigard has not adopted the BMCP. There are no criteria in the Comprehensive Plan, the TCDC, or the TUSA that require the annexation to occur subject to the BMCP. While the WCCDC does currently make the BMCP applicable to the Property, upon annexation this provision of the WCCDC will no longer have any relevance to the Property. From that point forward, all development will be approved or denied based upon its consistency with the City's Comprehensive Plan and the TCDC. Even if the annexation were required to be consistent with the BMCP, there are no annexation criteria in the BMCP.

B. Failure to Demonstrate the Adequacy of Services

Opponents have objected that the City has failed to meet its burden under Comprehensive Plan Section 10.1.1 to demonstrate that there are adequate services to meet the needs of the Property.

Finding: City Council finds that this objection is not well taken. As demonstrated above in Section II.C., the record contains substantial evidence in the form of testimony from all of the relevant service providers and a traffic engineering firm that demonstrates that all necessary service capacity exists to serve the Property. In addition, City Council will limit the potential service impact created by development of the property by restricting its use to residential uses permitted in the R-7 zone. Finally, during the subdivision review process, the Property owners will be required to demonstrate the adequacy of all services to meet the needs of their proposed development.

C. Consent to Annexation

Opponents have objected that the Annexation is impermissible because the consents to annexation were not given voluntarily, but instead were acquired as a condition of providing planning and permitting services to the unincorporated areas. Opponents contend that this practice violates the terms of the TUSA and UPAA. Opponents have also suggested that the City has offered applicants waivers from the BMCP if they consented to annexation.

Finding: City Council finds that these objections are not well taken. First, even if the City's policy of requiring applicants for planning and development services in unincorporated areas to agree to annexation could give an owner or elector who did not wish to be annexed a basis to object, that is not the situation in this case. No property owner or elector affected by this annexation has objected to it. All of the

owners of the affected parcels have affirmatively expressed their consent, as have all but one of the electors.

Second, the practice of requiring consent to annexation as a condition of extending urban services extraterritorially is allowed by the state statutes and has been recognized by the Court of Appeals. Specifically, ORS 222.115 provides that "[a] contract between a city and a landowner relating to extraterritorial provision of service and consent to eventual annexation of the property of the landowner shall be recorded and, when recorded, shall be binding on all successors with an interest in that property." *See also*, ORS 198.869 and *Bear Creek Valley Sanitary v. City of Medford*, 130 Or. App. 24 (1994) (ORS 222.115 confers upon the city the ability to require a consent to annexation prior to the extraterritorial provision of city services)).

Finally, contrary to Opponents' suggestions, there is nothing in the TUSA or UPAA between the City of Tigard and Washington County that prevents the City from exercising its authority under ORS 222.115 to condition the extension of its services upon consent to annexation. On the contrary, in the UPAA the County expressly recognizes the desirability of the City annexing the property within the Urban Services Area and affirms that the UPAA does not limit "the rights of the CITY and property owners to annex properties using ... provisions provided by the Oregon Revised Statutes." UPAA Sect. C.3. Therefore, Opponents' claim that requiring consents to annexation is in some form a breach of the City's obligations to the County and to County residents is simply mistaken.

With respect to Opponents' claim that applicants for development permits are offered "waivers" from the BMCP if they consent to annexation, there is no evidence in the record of any such waiver and certainly no evidence that any of the consents to this Annexation were obtained through such a waiver.

D. Comprehensive Plan Amendment & Statewide Planning Goals

One opponent suggested that annexation was not consistent with the statewide planning goals and specifically referenced Goal 5. Other than to allege that the City had not done Goal 5 planning for the Property and had failed to give the Department of Land Conservation and Development the required notice of a post-acknowledgment comprehensive plan amendment, he did not explain the basis of his objection.

Finding: City Council finds that the Opponent's objections regarding the SPGs are insufficiently developed to permit the City to adequately respond. In the interest of avoiding any dispute, however, to the extent that the Opponent was asserting that the annexation involved a substantive Comprehensive Plan amendment that required a demonstration of compliance with the SPGs, he was mistaken. As explained in

Section 2.A. above, the annexation does not involve a substantive comprehensive plan amendment or a zone change because the Property already carries the City's comprehensive plan map designation and the City's R-7 zone designation. For the same reasons, the City is not required to find that the other criteria for a comprehensive plan amendment contained in the City's Comprehensive Plan are satisfied. Furthermore, as explained in Section II.D.1. above, to the extent that the Opponent is objecting that the Annexation itself does not meet the SPGs, he is mistaken. The Annexation is consistent with the SPGs because it is controlled by, and consistent with all the applicable criteria contained in, Tigard's acknowledged Comprehensive Plan and the TCDC. See OAR 660-014-0060; ORS 197.175(2) (SPGs directly applicable only if comprehensive plan and applicable land use regulations have not been acknowledged by the commission).

F. Fairness of the Annexation Proceedings

Opponents have argued that because this annexation is occurring prior to a land use or limited land use application, it creates a "different standard for different annexations" and deprives interested parties of their legal right to due process.

Finding: City Council finds that this objection is not developed with sufficient specificity. In addition, the objection fails to address any of the applicable approval criteria. Opponents fail to specify what process is lacking. The City has provided all of the process required by the TCDC and state law. The property owners and electors seeking annexation are not opposed to the process used by the City. Any person opposing annexation has an opportunity to object to the annexation based on approval criteria before the City Council. The City Council finds that, in the absence of developed argument by Opponents, and given the compliance with all applicable procedural ordinance and statutes, the Opponents have received all the process to which they are entitled.

G. Use of Park System Development Charges and Traffic Impact Fees

Opponents have argued that because the City has failed to use parks system development charges and traffic impact fees to serve the areas being developed, the City is violating the UPAA, which creates an "unfair situation" for developers and future residents.

Finding: City Council finds that this objection is not well taken. First, the payment of system for development charges is neither an applicable approval criterion nor a requirement of annexation. Such payment occurs at the time a property owner applies for a building permit. Second, because the Property will be inside the City of Tigard at the time system development charge payments are made, those funds will be used to improve parks and roads inside the City of Tigard consistent with local and

state law governing the application and use of system development charges. The opponents fail to explain how this is either relevant to this annexation application or how it violates the UPAA.

H. Adequacy of Park Land

Opponents have argued that the Annexation should be denied because of the lack of availability of park land or because the City has failed to purchase park land on Bull Mountain.

Finding: City Council finds that this objection to the Annexation is not well taken. Tigard's Comprehensive Plan Policy 10.1.1 requires that the City review certain services for adequate capacity and whether such capacity can be made available if necessary. The relevant services are limited to water, sewer, drainage, streets, police and fire protection. No applicable policy requires the City to consider the adequacy of park or open space in an annexation application. Open space requirements are properly addressed at the subsequent land division stage.

I. Adequacy of Street Capacity

One Opponent argued that the annexation should be denied because of its traffic impact.

Finding: City Council finds that this objection is not well taken. The Staff Report at page 3 addressing Plan Policy 10.1.1 finds that there are roads available to serve the Property (SW 147th Terrace and SW 150th Avenue). In addition, the Kittelson Memorandum establishes that the street system is adequate to serve the Property. See Section II.C. Finally, the City will require internal streets to be constructed and will require that off-site improvements be made, if necessary, at the land division stage. As explained in the annexation application, "at the time of development, a traffic impact analysis will be prepared to measure the additional traffic volume in the proposed development and the capacity of the existing street network. All proposed streets pertaining to the development of the parcels will be improved to provide an adequate level of service concurrent with the Subdivision Review."

J. Harm and Delay

Opponents have argued that the Annexation is causing "irrevocable harm and stress" to the Bull Mountain community and is imposing lengthy delays on developers.

Finding: City Council finds that these objections are without merit. Neither of these concerns addresses applicable approval criteria. In addition, the allegation of "irrevocable harm and stress" is too vague to permit the City to respond and there is no evidence that any developers have experienced delays as a result of this Annexation.

IV. Conclusion

For all of the reasons stated herein, the City Council finds that the Annexation is approved, subject to the condition set out above.

CITY OF TIGARD, OREGON

Draft Ordinance with
emergency clause

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 25.61 ACRES, APPROVING SUNRISE LANE ANNEXATION (ZCA2005-00004), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT AND DECLARING AN EMERGENCY.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on October 25, 2005 to consider the annexation of twelve (12) parcels of land consisting of 25.61 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on October 25, 2005 on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibits "B" and "C"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 2: The City adopts the Findings in the Revised Staff Report (December 19, 2005) and the City Council Findings Regarding Annexation Proposal ZCA2005-00004 (**Exhibit "D"**).

SECTION 3: Council finds adoption of this ordinance is necessary for the peace, health and safety of the City; therefore, an emergency is declared and this ordinance shall take effect immediately upon passage.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

APPROVED: By Tigard City Council this _____ day of _____, 2005.

Catherine Wheatley, City Recorder

Craig Dirksen, Mayor

Approved as to form:

City Attorney

Date

BEING TRACTS OF LAND AS DESCRIBED IN THE FOLLOWING DOCUMENTS: 98-070527, 2003-020130, 2000-061432, 2004-107939, BOOK 1151, PAGE 113, 2004-082311, 2004-082312, AND 97-084282 ALL WASHINGTON COUNTY DEED RECORDS, SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, IN COUNTY OF WASHINGTON, STATE OF OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE SOUTHEAST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DOCUMENT NO. 97-084282 OF SAID COUNTY, SAID SOUTHEAST CORNER BEARS NORTH 89° 50' 44" WEST, 571.41 FEET ALONG THE SOUTH LINE OF SAID SECTION 5 AND NORTH 00° 41' 42" EAST, 20.00 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 5 MARKED WITH AN ALUMINUM DISC IN CONCRETE; THENCE ALONG A LINE 20.00 FEET PARALLEL WITH THE SAID SOUTH SECTION LINE NORTH 89° 50' 44" WEST, 212.89 FEET; THENCE SOUTH 00° 41' 42" WEST, 20.00 FEET TO A POINT ON SAID SOUTHERLY SECTION LINE; THENCE ALONG SAID SOUTH SECTION LINE NORTH 89° 50' 44" WEST, 233.64 FEET; THENCE LEAVING SAID SECTION LINE RECORDS NORTH 00° 43' 00" EAST, 200.00 FEET; THENCE ALONG THE NORTHERLY LINE OF SAID TRACT NORTH 89° 50' 44" WEST, 124.00 FEET; THENCE ALONG THE WESTERLY LINE OF SAID TRACT SOUTH 00° 43' 00" WEST, 180.00 FEET TO A POINT (20.00 FEET NORTHERLY OF, WHEN MEASURED PERPENDICULAR TO SAID SECTION LINE); THENCE ALONG A LINE PARALLEL WITH THE SAID SECTION LINE NORTH 89° 50' 44" WEST, 180.00 FEET; THENCE NORTH 00° 43' 00" EAST, 20.00 FEET; THENCE NORTH 89° 50' 44" WEST, 23.33 FEET; THENCE SOUTH 00° 43' 00" WEST, 40.00 FEET TO A POINT ON THE SOUTH SECTION LINE; THENCE ALONG SAID SOUTH SECTION LINE NORTH 89° 50' 44" WEST, 107.00 FEET; THENCE NORTH 00° 41' 34" EAST, 240.00 FEET TO A POINT ON THE SOUTHERLY LINE OF THAT TRACT DESCRIBED IN DEED BOOK 397, PAGE 547, WASHINGTON COUNTY DEED RECORDS; THENCE ALONG SAID SOUTHERLY LINE SOUTH 89° 50' 44" EAST, 42.89 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE ALONG THE EASTERLY LINE OF SAID TRACT OF NORTH 00° 40' 00" EAST, 399.80 FEET TO THE NORTHEAST CORNER OF SAID TRACT; THENCE LEAVING SAID NORTHEAST CORNER OF SAID TRACT SOUTH 89° 50' 28" EAST, 85.62 FEET TO THE SOUTHEAST CORNER OF THAT TRACT OF LAND AS DESCRIBED IN DOCUMENT NO. 2004-046173 OF SAID COUNTY; THENCE ALONG THE EAST LINE OF SAID TRACT, NORTH 00° 43' 00" EAST, 161.26 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 79° 30' 00" WEST, 243.12 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SUNRISE LANE (BEING 20.00 FROM THE CENTERLINE THEREOF, WHEN MEASURED PERPENDICULAR THERETO); THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) CALLS: NORTH 14° 15' 05" WEST, 98.41 FEET; THENCE NORTH 17° 04' 55" EAST, 72.15 FEET; THENCE NORTH 43° 11' 55" EAST, 116.47 FEET; THENCE NORTH 04° 35' 55" EAST, 84.20 FEET TO THE NORTHWEST CORNER OF THAT TRACT DESCRIBED IN DEED RECORD BOOK 186, PAGE 307; THENCE ALONG THE SOUTHERLY LINE OF THAT TRACT DESCRIBED IN DEED DOCUMENT NUMBER 2002-019693, WASHINGTON COUNTY DEED RECORDS SOUTH 89° 28' 42" EAST, 699.75 FEET TO THE NORTHEAST CORNER OF THAT TRACT DESCRIBED IN DEED RECORD BOOK 861, PAGE 211; THENCE ALONG THE WESTERLY LINE OF THAT CERTAIN TRACT OF LAND AS DESCRIBED IN DOCUMENT NO. 2001-085039 ALONG THE FOLLOWING FIVE (5) COURSES: SOUTH 00° 41' 42" WEST, 393.64 FEET; THENCE NORTH 89° 50' 44" EAST, 100.00 FEET; THENCE SOUTH 00° 41' 42" WEST, 480.00 FEET; THENCE NORTH 89° 50' 44" EAST, 112.90 FEET; THENCE SOUTH 00° 41' 42" WEST, 280.00 FEET TO SAID POINT OF BEGINNING.

CONTAINS 19.638 ACRES, MORE OR LESS.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
NOV. 18, 1998
MICHAEL D. FRANK
53854

Including Tax Lot 600

Escrow No. 08-838878-DFB-28
Title Order No. 00838878

Beginning at a point North 89°49' West, 1409.7 feet and 640 feet North 0°43' East of the Southeast corner of Section 5, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, being the Northeast corner of a tract conveyed to Fletcher Rockwood, et ux, by Deed recorded September 7, 1957, in Book 397, Page 547, Deed Records; thence South 89°44'17" East along the Easterly projection of the North line of said Rockwood Tract, 85.83 feet; thence North 0°43' East, 160 feet; thence North 79°30' West 225.74 feet to the Easterly right-of-way line of Sunrise Lane; thence South 14°18' East, 90 feet and South 4°14'45" West, 119.8 feet to the North line of said Rockwood Tract; thence South 89°44'17" East, 142.17 feet to the place of beginning.

Order No: 267915

Including Tax Lot 700

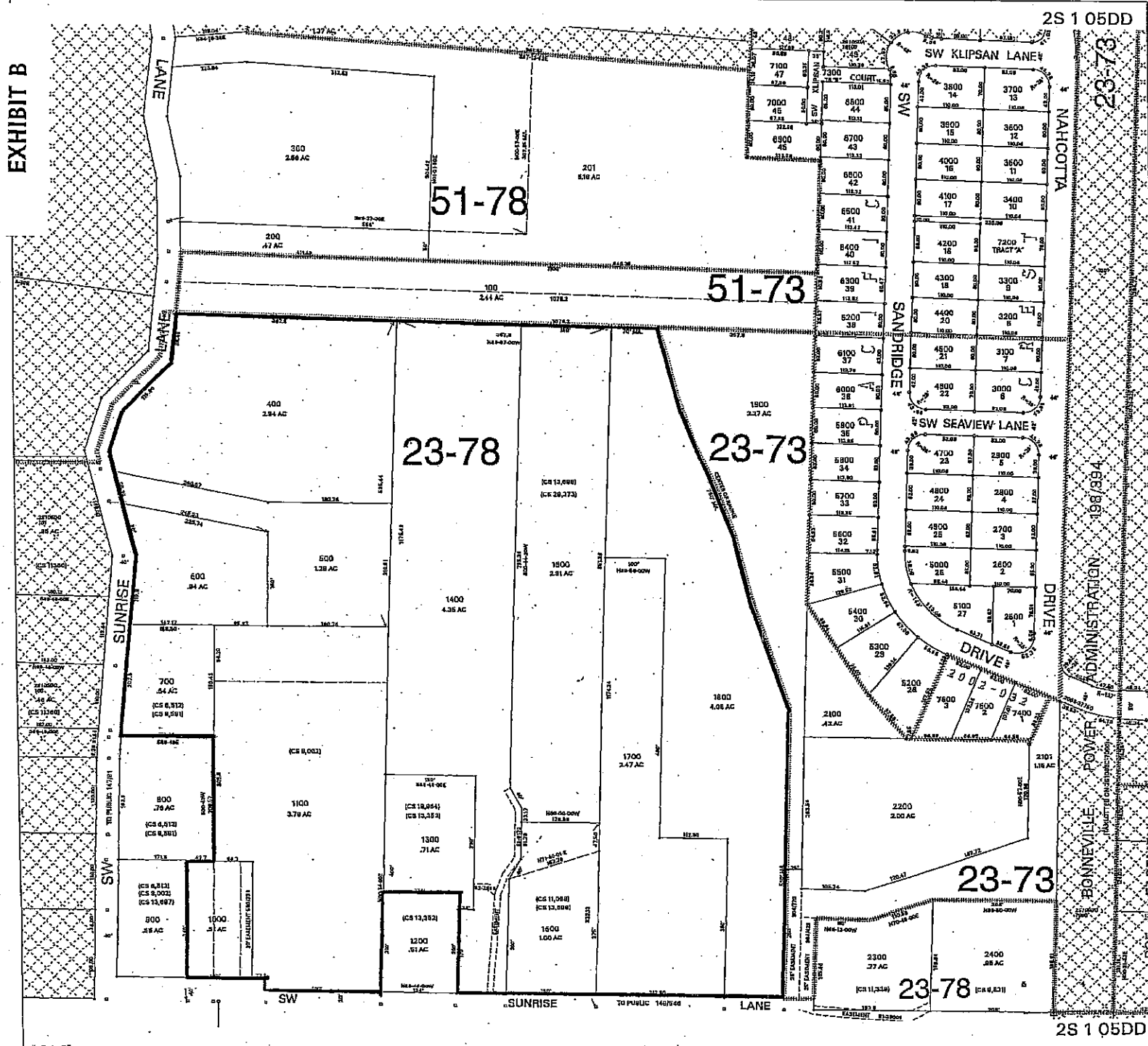
A tract of land in the Southeast one-quarter of Section 5, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

BEGINNING at an iron pipe set North 89°49' West 1409.7 feet and North 0°43' East 449.57 feet from the Southeast corner of Section 5, Township 2 South, Range 1 West of the Willamette Meridian; running thence North 89°49' West a distance of 171.09 feet to a point on the center line of a 40 foot roadway described on Page 81 of Book 147, Washington County, Oregon, Deed Records, from which an iron pipe bears South 89°49' East, a distance of 20.05 feet; thence North 4°12' East along the center line of said 40 foot wide roadway a distance of 190.90 feet to the Northwest corner of tract described in Deed to Elton C. Phillips, et ux, recorded in Book 473, Page 227, Deed Records of Washington County, Oregon, from which an iron rod bears South 89°49' East a distance of 20.00 feet; thence South 89°49' East a distance of 159.5 feet to an iron rod; thence South 0°43' West a distance of 190.43 feet to the point of beginning, except that portion lying in Sunrise Lane.

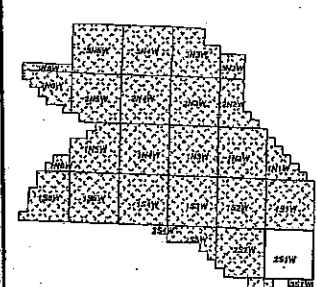
Including Tax Lot 1800

A tract of land located within the southeast one-quarter of Section 5, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, being more particularly described as follows:

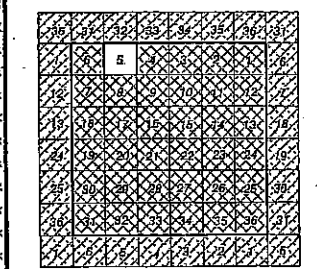
Commencing at the corner to section 4, 5, 8, and 9, Township 2 South, Range 1 West W.M.; thence N 89° 50' 44" W a distance of 451.8 feet; thence N 00° 56' 42" E a distance of 20.00 feet to the True point of Beginning; thence N 00° 56' 42" E a distance of 530 to the center of the ravine; thence N 22° 25' 19" W, along the center of the ravine, a distance of 750 more or less; thence N 89° 28' 42" a distance of 70 feet more or less; thence S 00° 41' 42" W a distance of 393.64 feet; thence S 89° 50' 44" E a distance of 100 feet; thence S 00° 41' 42" W a distance of 480 feet; thence S 89° 50' 44" E a distance of 112.90 feet; S 00° 41' 42" W a distance of 280 feet; thence S 89° 50' 44" E a distance of 120 feet to the true point of beginning.



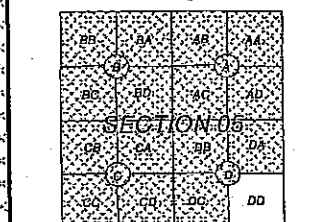
2S 1 05DD



WASHINGTON COUNTY OREGON
SE1/4 SE1/4 SECTION 05 T2S R1W W.M.
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us



Cancelled Taxlots For: 2S105DD
101,2001,2002,2004,

Assessment
CARTOGRAPHY
Taxation

PLOT DATE: January 22, 2004
FOR ASSESSMENT PURPOSES
ONLY - DO NOT RELY ON
FOR OTHER USE
Map areas delineated by either gray shading or a cross-hatched
pattern are for reference only and may not indicate the most
current property boundaries. Please consult the appropriate map
for the most current information.

TIGARD
2S 1 05DD



CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

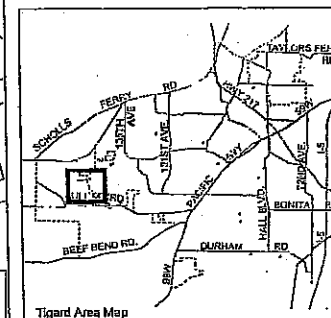
VICINITY MAP

=====

ZCA2005-00004

=====

SUNRISE LANE ANNEXATION



0 200 400 600 Feet

1"= 412 feet

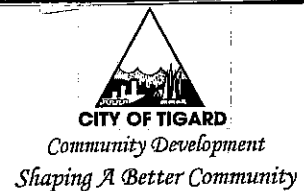


City of Tigard

Information on this map is for general location only and should be verified with the Development Services Division.
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
<http://www.ci.tigard.or.us>

Plot date: Oct 7, 2005; C:\magic\MAGIC03.APR

**REVISED STAFF REPORT TO THE
CITY COUNCIL
FOR THE CITY OF TIGARD, OREGON**



SECTION I. APPLICATION SUMMARY

FILE NAME:	SUNRISE LANE ANNEXATION	
CASE NO.:	Zone Change Annexation (ZCA)	ZCA2005-00004
APPLICANT:	DR Horton, Inc. - Portland c/o J/T Smith Companies 4386 SW Macadam, Suite 102 Portland, OR 97239	APPLICANT'S REP.: WRG Design, Inc. 5415 SW Westgate Drive Portland, OR 97221
OWNER:	Angelo and Rosina Cortese 15175 SW Sunrise Lane Tigard, OR 97224	OWNER: Dwight and Paula Cash 14885 SW Sunrise Lane Tigard, OR 97224
OWNER:	James L Corliss PO Box 23970 Tigard, OR 97224	OWNER: Leslie and Carol Inman 15630 SW Greens Way Tigard, OR 97224
OWNER:	Providence Newberg Health Foundation 25300 Lone Oak Street Hillsboro, OR 97123	OWNER: Steven and Joan Nelson 14775 SW Sunrise Lane Tigard, OR 97224
OWNER:	Patricia Marshall 14765 SW Sunrise Lane Tigard, OR 97224	OWNER: Richard & Michelle Crombie 15165 SW Sunrise Lane Tigard, OR 97224
OWNER:	Jennifer & Leighton Walsh 15169 SW Sunrise Lane Tigard, OR 97224	
PROPOSAL:	The applicant is requesting annexation of nine (9) parcels containing 19.95 acres into the City of Tigard. An additional adjacent 5.66 acres has been included by means of consent by Patricia Marshall, Michelle Crombie and Leighton Walsh. Therefore, this annexation is for twelve (12) parcels totaling 25.61 acres.	
CURRENT ZONING DESIGNATION:	R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.	
LOCATION:	North of Bull Mountain Road at 150 th and Sunrise Lane; WCTM 2S105DD Tax Lots 400, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1600, 1700 and 1800.	

**APPLICABLE
REVIEW
CRITERIA:**

Community Development Code Chapters 18.320 and 18.390;
Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and
ORS Chapter 222.

NOTE: In this revised staff report, deletions are indicated by ~~strikethrough~~
and additions are highlighted.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance ~~and consideration of the addition of the Sunrise Lane right-of-way where it abuts the subject parcels.~~

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:

A parcel that is contiguous to the city limits may apply for annexation at any time. The City requires that an applicant or property owner annex the property before submitting a land use application. The applicant/owner, DR Horton, has not applied for subdivision review at this time, pending approval of the proposed annexation. The total area represented in the applicant's annexation request is 19.95 acres comprised of nine (9) parcels, three of which are contiguous to the present city limits along their northern boundaries. Three additional parcels, totaling 5.66 acres, located adjacent to the lots in the proposed annexation have been included by means of consents by Patricia Marshall, Michelle Crombie and Leighton Walsh. Therefore, this annexation is for twelve (12) parcels totaling 25.61 acres.

NOTE: ~~It is the City's practice to annex all rights-of-way adjacent to parcels being annexed. The right-of-way for Sunrise Lane was inadvertently omitted in the proposed boundary description and accompanying map. As this was discovered after notice had been sent, the Council should consider, under consultation with the City Attorney, adding the right-of-way of Sunrise Lane where it abuts the subject parcels.~~

Vicinity Information:

The subject properties are located North of Bull Mountain Road at 150th and Sunrise Lane; including Tax Lots 400, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1600, 1700 and 1800, WCTM 2S105DD.

CONTINUATION OF CITY COUNCIL HEARING

At their October 25, 2005 Council meeting, at the request of opponents of the proposed annexation, City Council agreed to continue the hearing until November 22, 2005 and accept additional testimony. At the November 22, 2005 Council meeting, at the request of the parties, Council agreed to reopen the record to allow additional argument and evidence on the Tigard Comprehensive Plan Policies 10.1.1.a and 10.1.2.e and Community Development Code 18.320.020.B. Additionally, the parties agreed to a schedule for Arguments by December 7th, Rebuttal by December 14th, Applicant's Statement by December 15th, a revised staff report by December 19th, and continuation of the public hearing on December 20, 2005.

Staff has reviewed the additional testimony, argument and evidence submitted by the applicant and opponents. Additionally, staff has reviewed the City Council Findings Regarding Annexation Proposal ZCA2005-00004 (attached) provided by the applicant and finds that they are consistent with the findings in this staff report.

The issues raised by the opponents, as itemized in the November 1, 2005 letter to the Council from Lawrence Derr, attorney for the opponents, include the inability of the City to provided services to the subject property, the applicability of the Bull Mountain Community Plan to annexed territory, and the legitimacy of the property owner consents to annex. Staff finds that these issues have been satisfactorily addressed in the materials submitted by the applicant including the City Council Findings Regarding Annexation Proposal ZCA2005-00004.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since September 9, 2005.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Staff finds that there are two roads to the subject property (SW 147th Terrace and SW 150th Avenue), a 6" water line in SW 150th Avenue to Sunrise Lane, no sewer lines to the subject parcels, and drainage on the site presently provided by two natural drainageways. Before the land is developed at its designated capacity of 7 units to the gross acre, the subdivision review will require that adequate facilities are available and upsized if necessary to handle the development. By providing this infrastructure, the site will have adequate service capacity. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a non-remonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

Staff finds that no L.I.D's currently encumber the subject parcels. All public infrastructure listed above will have to be completed before the land is subdivided by a subdivision plat. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no non-remonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Sunrise Lane. All future lots within the subdivision will be inside city limits. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code

Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential development will be reviewed and conditioned as necessary as part of the Sunrise Lane subdivision review. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions will be addressed at the time the property develops. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. (The R-7 zoning designation is consistent with the original Washington County's R-6 zoning

designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

(See table on the following page)

TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial■

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

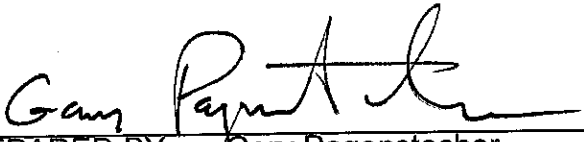
Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00004 – SUNRISE LANE ANNEXATION.


PREPARED BY: Gary Pagenstecher
Associate Planner

December 19, 2005
DATE


APPROVED BY: Richard Bewersdorff
Planning Manager

December 19, 2005
DATE

CITY OF TIGARD, OREGON
CITY COUNCIL FINDINGS REGARDING ANNEXATION PROPOSAL
ZCA2005-00004

I. Introduction

DR Horton, Inc. (the "Applicant") applied to the City of Tigard (the "City") requesting that the City annex nine (9) parcels totaling 19.95 acres. An additional three (3) parcels were added to the application based on the consent of the property owners, bringing the total annexation area, including abutting right of ways, to twelve (12) parcels totaling 25.61 acres (the "Property"). The Property abuts the current city limits and already carries the City's R-7 zoning designation pursuant to Washington County Development Code Section (WCCDC) 801-7.4 and the Tigard Urban Services Agreement with the County (the "TUSA"). All of the owners in fee of the Property, as well as all of the electors on the Property but one, have voluntarily consented to the proposed annexation (the "Annexation").

The Property consists of Tax Lots 400, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1600, 1700 and 1800 on Washington County Tax Map 2S105DD. These parcels are located north of Bull Mountain Road at 150th and Sunrise Lane.

II. Approval Criteria and Findings

The City Council hereby incorporates by reference the proposed findings contained in the Staff Report to the City Council for the City of Tigard, Oregon re: Sunrise Lane Annexation, dated October 25, 2005, and the Revised Staff Report, dated December 19, 2005, except to the extent that those proposed findings are inconsistent with the findings set out below. Where there is a conflict, these findings shall control.

A. Tigard Community Development Code Section 18.320.020

B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

- 1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area; and*

Finding: City Council finds that this criterion is satisfied. There is substantial evidence in the record that all services and facilities are available to the area and have sufficient capacity to provide service to the Property. The evidence is summarized below in Section II.C.

2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Finding: City Council finds that this criterion is satisfied. The analysis and evidence referenced in Section II.C. below are incorporated into this finding by reference.

3. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

Finding: The Council finds that this criterion is satisfied. The Property is currently subject to Article VIII of the WCCDC, which replaced the County's comprehensive plan and zoning designations with the "functionally equivalent zoning districts and plan designations of the City of Tigard" for property in the Bull Mountain Community Plan area. WCCDC 801-7.4. The Property thus already carries the City of Tigard's comprehensive plan and R-7 zoning designations, and Applicant has not proposed to modify either designation. Therefore, this annexation will not involve a change in the comprehensive plan or zoning designation of the Property. The conversion required by this criterion has, therefore, already occurred and the criterion is satisfied.

B. METRO Code Section 3.09.050(d)

An approving entity's final decision on a boundary change shall include findings and conclusions addressing the following criteria:

1. *(1) Consistency with directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;*

Finding: City Council finds that this criterion is satisfied. The City of Tigard is a party to the Tigard Urban Services Agreement dated November 26, 2002 (the "TUSA"), which was adopted pursuant to ORS 195.065. The record contains a copy of the TUSA. The Property lies within the Urban Services Area defined in that agreement on Map A. Section I.D. of the TUSA provides that:

"The CITY and COUNTY will be supportive of annexations to the CITY over time. The CITY shall endeavor to annex the unincorporated areas shown on Map A, in keeping with the following schedule:

1. Near to mid-term (3 to 5 years): Bull Mountain area and unincorporated lands north of the Tualatin River and South of Durham Road, and. . ."

The Property to be annexed abuts the City of Tigard, is unincorporated area shown on Map A, and is part of the Bull Mountain area. The Annexation is thus entirely consistent with, and anticipated by, the directly applicable provisions of the TUSA.

2. *(2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065 between the affected entity and a necessary party;*

Finding: City Council finds that this criterion is satisfied. The City of Tigard and Washington County are parties to an Urban Planning Area Agreement which was fully executed on July 8, 2004 (the "UPAA"). The UPAA implements the requirement of the TUSA that the City and County coordinate and make consistent their comprehensive plan. UPAA Section III. C. sets out the policies governing annexations in the TUSA. Specifically, the UPAA recognizes the City of Tigard as the "ultimate local governance provider to all of the territory in the [TUSA]." It expresses the City and County's desire to transfer County services to the City in an orderly fashion in order to avoid interruption or diminishment of services. Section III.

C. 2. As set out in Section II.C. below, to the extent services are not already being provided to the Property by the City, all necessary services are available to meet the needs of the Property and to provide orderly transitions without interruption or reduction in service. The UPAA also expresses a preference for annexations conducted pursuant to annexations plans, but expressly allows the "CITY and property owners to annex properties using the other provisions provided by the Oregon Revised Statutes." Section III. C. 3. This Annexation is proceeding consistent with the requirements of ORS 222.170. See below in Section II.D. The Annexation is, therefore, consistent with the UPAA. There are no other urban planning agreements or agreements with applicable criteria, other than perhaps the City's Comprehensive Plan and the TCDC, and their requirements are satisfied by this Annexation. See Sections II.A. and II.C.

3. *(3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;*

Finding: City Council finds that this criterion is satisfied. The Annexation complies with all applicable standards and criteria for boundary changes contained in the Comprehensive Plan and any public facility plans. The arguments and evidence contained in Section II.C. are incorporated into this finding by reference.

4. *(4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;*

Finding: City Council finds that this criterion is satisfied. The City of Tigard has amended its development code to comply with all applicable Metro Functional Plan requirements. Therefore, because the annexation complies with the TCDC and Comprehensive Plan requirements for annexations, the annexation is consistent with the Regional Framework Plan and Functional Plan .

5. *(5) Whether the proposed change will promote or interfere with the timely, or orderly and economic provision of public facilities and services;*

Finding: City Council finds that the Annexation will promote the orderly and economic provision of public facilities and services. As expressly recognized by the parties to the TUSA and UPAA, the City of Tigard is the preferred provider of urban services to the Property. The TUSA calls for Washington County to "focus its energies on those services that provide county-wide benefit and [to] transition out of providing municipal services," and recognizes that those services are property provided by "cities and special services districts." TUSA Section I.F. The City of

Tigard already provides certain services to the Property, including planning and permitting services, and as demonstrated below in Section II.C., the City can efficiently and effectively provide the remaining public facilities and services to the Property.

6. *(6) The territory lies within the Urban Growth Boundary;
and*

Finding: City Council finds that this criterion is satisfied. The Property lies within the City of Tigard's Urban Growth Boundary (the "UGB").

7. *(7) Consistency with other applicable criteria for the
boundary change in question under state and local law.*

Finding: City Council finds that this criterion is satisfied. Compliance with all local annexation requirements is demonstrated in Sections II.A. and II.C. Compliance with state law governing annexations is demonstrated in Section II.D.

8. *(e) When there is no urban service agreement adopted pursuant to ORS 195.065 that is applicable, and a boundary change decision is contested by a necessary party, the approving entity shall also address and consider, information on the following factors in determining whether the proposed boundary change meets the criteria of Section 3.09.050(d) and (g).*

Finding: City Council finds that this criterion is not applicable to the annexation because the Property is subject to an urban services agreement adopted pursuant to ORS 195.065.

C. Tigard Comprehensive Plan Section 10.1.1 and 10.1.2

10.1.1 Prior to the annexation of land to the City of Tigard:

- a. *The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed*, and will not significantly reduce the level of the services available to developed and undeveloped land within the City of Tigard. The services are:*

...

** The most intense use allowed by the conditions of approval, the zone or the Comprehensive Plan."*

Interpretation: As a preliminary matter, City Council interprets the term "capacity" as used in this Policy to mean that the system of providing the services at issue is capable of providing the services. In some cases, this may mean that some components of the service are not presently in place but can and will be added before development. For example, local distribution lines and local streets throughout an area to be annexed do not need to be in place to determine that the water or transportation system is adequate. What is needed is that the overall system is adequate and that the addition of local lines or any necessary upgrades will occur before development and will not burden the overall system to the point that the level of service to other properties is significantly reduced.

This interpretation is consistent with the rest of the sentence, which refers to "such services to be made available." This makes it clear that additional portions of the service system may be added and do not have to be presently in place, so long as the system is expected to be in place by the time of development.

To interpret this policy as requiring that all portions of every system be physically in place at the time of development would be inconsistent with the overall approach to annexation demonstrated in the comprehensive plan. That overall approach is that urbanization is to occur in an orderly fashion, with development occurring in annexed areas, not in unincorporated areas. Requiring all portions of all systems to be in place would preclude annexation, contrary to the overall intent of the Comprehensive Plan, which is to provide for orderly annexation.

This interpretation is consistent with the other provisions of the Comprehensive Plan. Policy 10.1.1.b provides that annexation applicants may be required to agree to local improvement districts. This policy anticipates that some portions of the required systems will be provided after annexation but before development. Interpreting Policy 10.1.1.a to require all portions of service systems to be in place prior to annexation would make Policy 10.1.1.b meaningless.

1. *Water;*

Finding: City Council has reviewed the evidence and finds that, with respect to the capacity to provide water, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 zone shall be allowed on the Property. The Property is now and will continue to be zoned R-7, medium-density residential, with 5,000 square foot minimum lot sizes. In a December 6, 2005 letter signed by

Agustin Duenas (the "Duenas Letter"), City Engineer for the City of Tigard, Mr. Duenas states:

"The City will provide water service to the area to be annexed. The City has an adequate water supply and the overall infrastructure to provide water service to the area to be annexed without significant reduction in the level of service to existing customers. It also has the capacity to provide any additional lines that may be needed to provide service when the annexed properties are developed. ... The water system does have adequate capacity to serve the property to be annexed to the most intense use allowed without significantly reducing the level of services available to developed and undeveloped land within Tigard."

In addition, the record contains a December 6, 2005 letter from Rich Boyle, Project Manager for the applicant with WRG Design, Inc. (the "Boyle Letter"). Mr. Boyle's letter states in part: "The City has determined that it can provide services to this site and doing so will not significantly reduce the level of services to developed and undeveloped land within the City of Tigard."

2. *Sewer;*

Finding: City Council has reviewed the evidence and finds that, with respect to the capacity to provide sewer services to the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 zone shall be allowed on the Property. In a December 5, 2005 letter from Terry Keyes (the "Keyes Letter"), Development Services Manager for Clean Water Services ("CWS"), Mr. Keyes notes that once a parcel is annexed, service is transferred from CWS to the applicable City. The Keyes Letter further notes the relevant sanitary sewer's capacity to serve the annexation site under the proposed zoning district. The Duenas letter states that: "... The City is capable of determining what additional facilities will be required and of administering all portions of the retail sanitary sewer system, both existing and future additions in the area to be annexed, without significant reduction to the level of services provided to properties in the City."

3. *Drainage;*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet drainage needs for the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 zone shall be allowed on the Property. The Keys Letter states that capacity of drainage systems serving the site should not be an issue for the proposed annexation. The Duenas Letter states that: "The retail system has the capacity to provide adequate storm drainage without significant reduction to the level of services provided to

developed and undeveloped properties in the City." The Boyle Letter states: "... capacity of the drainage system serving the site should not be an issue for this proposed annexation."

4. *Streets;*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet street services for the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in an R-7 shall be allowed on the Property. In a December 2, 2005 memorandum from Julia Kuhn of Kittelson & Associates (the "Kittelson Memorandum"), Ms. Kuhn evaluates the traffic capacity of the area surrounding the Property and concludes that: "There is sufficient infrastructure to accommodate the proposed parcel at maximum buildout and the annexed parcel will not create degrade the level of service provided at any impacted intersection." It is also the case that prior to the development of the Property, subdivision review will require a demonstration that adequate transportation facilities are available or will be made available if necessary to handle the development.

5. *Police; and*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet the policing needs of the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in the R-7 zone shall be allowed on the Property. In a December 2, 2005 letter from Chief William Dickinson (the "Dickinson Letter"), Chief Dickinson's states in part: "The City of Tigard Police Department has determined that it has adequate services to serve the most intense use allowed and that providing services will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard."

6. *Fire Protection.*

Finding: The City Council has reviewed the evidence and finds that, with respect to the capacity to meet the fire protection needs of the Property, this criterion is satisfied, subject to the condition that only the permitted residential uses in the R-7 zone shall be allowed on the Property. In a November 21, 2005 letter from Eric T. McMullen, Deputy Fire Marshal with the Tualatin Valley Fire & Rescue District, Mr. McMullen's states that the District currently provides services to the entire Bull Mountain area, both inside and outside of the City of Tigard and that they have sufficient personnel and equipment to provide services to developed and undeveloped land within the City.

10.1.2 Approval of proposed annexations of land by the City shall be based on findings with respect to the following:

7. a. The annexation eliminates an existing "Pocket" or "Island" of unincorporated territory; or

Finding: City Council finds that the annexation does not eliminate an existing "Pocket" or "Island" of unincorporated territory, but that the annexation satisfies the requirements of b-e below and therefore is consistent with Comprehensive Plan Section 10.1.2.

8. b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;

Finding: City Council has reviewed the map of the proposed annexation area and finds that annexing the Property to the City of Tigard will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City. The Dickinson Letter evidences the Tigard Police Department's conclusion that it has adequate capacity to serve the Property. This criterion is satisfied.

9. c. The police department has commented on the annexation;

Finding: City Council finds on the basis of the Dickinson letter that this criterion is satisfied.

10. d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;

Finding: City Council finds, based on the maps of the Property included in the record, and the City's planning documents, that the Property is contiguous to the City's current boundary and that it is within the Tigard Urban Planning Area.

11. e. The annexation can be accommodated by the services listed in 10.1.1(a).

Finding: City Council finds that this criterion is satisfied and incorporates by reference the evidence cited in findings C 1-6 above.

D. Compliance with State Law

1. Consistency with the statewide planning goals;

Finding: City Council finds that this Annexation is consistent with the Statewide Planning Goals (the "SPGs"), as implemented through the Comprehensive Plan and TCDC. OAR 660-014-0060 provides that "[a] city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) or 197.625 shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinances do not control the annexation." The City's Comprehensive Plan has been acknowledged by the Department of Land Conservation and Development. As the criteria set out in these findings demonstrate, the Annexation is controlled by the Comprehensive Plan and TCDC. And, as further demonstrated by these findings, the Annexation complies with the criteria set out in the Comprehensive Plan. See Sections II.A. and II.C.

2. Consistency with the state statutes governing consents to annexation.

Finding: City Council finds that the Annexation has occurred in compliance with all applicable consent provisions of the Oregon Revised Statutes. The City Council elected not to submit the Annexation to the electorate, as permitted by ORS 222.120 and ORS 222.170, because, as the record reveals, a majority of the electors registered in the territory proposed to be annexed consented in writing to annexation and the owners of more than half the land comprising the Property consented as well, in accordance with the requirements of ORS 222.170(2). City Council also notes that based on the evidence in the record, this annexation satisfies both forms of double majority annexation and the triple majority annexation provision contained in ORS 222.170(1).

III. Response to Opposition Arguments

A. The Bull Mountain Community Plan

Opponents have objected that the proposed annexation is inconsistent with and amounts to a repeal of the Bull Mountain Community Plan (the "BMCP"), which currently imposes certain development and use restrictions on the Property. They contend that the Washington County Development Code expressly makes the BMCP applicable to the Property, notwithstanding the fact that it otherwise adopts the City of

Tigard's comprehensive plan and zoning designations for the area. They contend that the terms of the annexation must be consistent with the requirements of the BMCP.

Finding: City Council finds that these objections are not well taken. The City of Tigard has not adopted the BMCP. There are no criteria in the Comprehensive Plan, the TCDC, or the TUSA that require the annexation to occur subject to the BMCP. While the WCCDC does currently make the BMCP applicable to the Property, upon annexation this provision of the WCCDC will no longer have any relevance to the Property. From that point forward, all development will be approved or denied based upon its consistency with the City's Comprehensive Plan and the TCDC. Even if the annexation were required to be consistent with the BMCP, there are no annexation criteria in the BMCP.

B. Failure to Demonstrate the Adequacy of Services

Opponents have objected that the City has failed to meet its burden under Comprehensive Plan Section 10.1.1 to demonstrate that there are adequate services to meet the needs of the Property.

Finding: City Council finds that this objection is not well taken. As demonstrated above in Section II.C., the record contains substantial evidence in the form of testimony from all of the relevant service providers and a traffic engineering firm that demonstrates that all necessary service capacity exists to serve the Property. In addition, City Council will limit the potential service impact created by development of the property by restricting its use to residential uses permitted in the R-7 zone. Finally, during the subdivision review process, the Property owners will be required to demonstrate the adequacy of all services to meet the needs of their proposed development.

C. Consent to Annexation

Opponents have objected that the Annexation is impermissible because the consents to annexation were not given voluntarily, but instead were acquired as a condition of providing planning and permitting services to the unincorporated areas. Opponents contend that this practice violates the terms of the TUSA and UPAA. Opponents have also suggested that the City has offered applicants waivers from the BMCP if they consented to annexation.

Finding: City Council finds that these objections are not well taken. First, even if the City's policy of requiring applicants for planning and development services in unincorporated areas to agree to annexation could give an owner or elector who did not wish to be annexed a basis to object, that is not the situation in this case. No property owner or elector affected by this annexation has objected to it. All of the

owners of the affected parcels have affirmatively expressed their consent, as have all but one of the electors.

Second, the practice of requiring consent to annexation as a condition of extending urban services extraterritorially is allowed by the state statutes and has been recognized by the Court of Appeals. Specifically, ORS 222.115 provides that "[a] contract between a city and a landowner relating to extraterritorial provision of service and consent to eventual annexation of the property of the landowner shall be recorded and, when recorded, shall be binding on all successors with an interest in that property." *See also*, ORS 198.869 and *Bear Creek Valley Sanitary v. City of Medford*, 130 Or. App. 24 (1994) (ORS 222.115 confers upon the city the ability to require a consent to annexation prior to the extraterritorial provision of city services)).

Finally, contrary to Opponents' suggestions, there is nothing in the TUSA or UPAA between the City of Tigard and Washington County that prevents the City from exercising its authority under ORS 222.115 to condition the extension of its services upon consent to annexation. On the contrary, in the UPAA the County expressly recognizes the desirability of the City annexing the property within the Urban Services Area and affirms that the UPAA does not limit "the rights of the CITY and property owners to annex properties using ... provisions provided by the Oregon Revised Statutes." UPAA Sect. C.3. Therefore, Opponents' claim that requiring consents to annexation is in some form a breach of the City's obligations to the County and to County residents is simply mistaken.

With respect to Opponents' claim that applicants for development permits are offered "waivers" from the BMCP if they consent to annexation, there is no evidence in the record of any such waiver and certainly no evidence that any of the consents to this Annexation were obtained through such a waiver.

D. Comprehensive Plan Amendment & Statewide Planning Goals

One opponent suggested that annexation was not consistent with the statewide planning goals and specifically referenced Goal 5. Other than to allege that the City had not done Goal 5 planning for the Property and had failed to give the Department of Land Conservation and Development the required notice of a post-acknowledgment comprehensive plan amendment, he did not explain the basis of his objection.

Finding: City Council finds that the Opponent's objections regarding the SPGs are insufficiently developed to permit the City to adequately respond. In the interest of avoiding any dispute, however, to the extent that the Opponent was asserting that the annexation involved a substantive Comprehensive Plan amendment that required a demonstration of compliance with the SPGs, he was mistaken. As explained in

Section 2.A. above, the annexation does not involve a substantive comprehensive plan amendment or a zone change because the Property already carries the City's comprehensive plan map designation and the City's R-7 zone designation. For the same reasons, the City is not required to find that the other criteria for a comprehensive plan amendment contained in the City's Comprehensive Plan are satisfied. Furthermore, as explained in Section II.D.1. above, to the extent that the Opponent is objecting that the Annexation itself does not meet the SPGs, he is mistaken. The Annexation is consistent with the SPGs because it is controlled by, and consistent with all the applicable criteria contained in, Tigard's acknowledged Comprehensive Plan and the TCDC. See OAR 660-014-0060; ORS 197.175(2) (SPGs directly applicable only if comprehensive plan and applicable land use regulations have not been acknowledged by the commission).

F. Fairness of the Annexation Proceedings

Opponents have argued that because this annexation is occurring prior to a land use or limited land use application, it creates a "different standard for different annexations" and deprives interested parties of their legal right to due process.

Finding: City Council finds that this objection is not developed with sufficient specificity. In addition, the objection fails to address any of the applicable approval criteria. Opponents fail to specify what process is lacking. The City has provided all of the process required by the TCDC and state law. The property owners and electors seeking annexation are not opposed to the process used by the City. Any person opposing annexation has an opportunity to object to the annexation based on approval criteria before the City Council. The City Council finds that, in the absence of developed argument by Opponents, and given the compliance with all applicable procedural ordinance and statutes, the Opponents have received all the process to which they are entitled.

G. Use of Park System Development Charges and Traffic Impact Fees

Opponents have argued that because the City has failed to use parks system development charges and traffic impact fees to serve the areas being developed, the City is violating the UPAA, which creates an "unfair situation" for developers and future residents.

Finding: City Council finds that this objection is not well taken. First, the payment of system for development charges is neither an applicable approval criterion nor a requirement of annexation. Such payment occurs at the time a property owner applies for a building permit. Second, because the Property will be inside the City of Tigard at the time system development charge payments are made, those funds will be used to improve parks and roads inside the City of Tigard consistent with local and

state law governing the application and use of system development charges. The opponents fail to explain how this is either relevant to this annexation application or how it violates the UPAA.

H. Adequacy of Park Land

Opponents have argued that the Annexation should be denied because of the lack of availability of park land or because the City has failed to purchase park land on Bull Mountain.

Finding: City Council finds that this objection to the Annexation is not well taken. Tigard's Comprehensive Plan Policy 10.1.1 requires that the City review certain services for adequate capacity and whether such capacity can be made available if necessary. The relevant services are limited to water, sewer, drainage, streets, police and fire protection. No applicable policy requires the City to consider the adequacy of park or open space in an annexation application. Open space requirements are properly addressed at the subsequent land division stage.

I. Adequacy of Street Capacity

One Opponent argued that the annexation should be denied because of its traffic impact.

Finding: City Council finds that this objection is not well taken. The Staff Report at page 3 addressing Plan Policy 10.1.1 finds that there are roads available to serve the Property (SW 147th Terrace and SW 150th Avenue). In addition, the Kittelson Memorandum establishes that the street system is adequate to serve the Property. See Section II.C. Finally, the City will require internal streets to be constructed and will require that off-site improvements be made, if necessary, at the land division stage. As explained in the annexation application, "at the time of development, a traffic impact analysis will be prepared to measure the additional traffic volume in the proposed development and the capacity of the existing street network. All proposed streets pertaining to the development of the parcels will be improved to provide an adequate level of service concurrent with the Subdivision Review."

J. Harm and Delay

Opponents have argued that the Annexation is causing "irrevocable harm and stress" to the Bull Mountain community and is imposing lengthy delays on developers.

Finding: City Council finds that these objections are without merit. Neither of these concerns addresses applicable approval criteria. In addition, the allegation of "irrevocable harm and stress" is too vague to permit the City to respond and there is no evidence that any developers have experienced delays as a result of this Annexation.

IV. Conclusion

For all of the reasons stated herein, the City Council finds that the Annexation is approved, subject to the condition set out above.



Michael C. Robinson
PHONE: 503.727.2264
EMAIL: mrobinson@perkinscoie.com

RECEIVED PLANNING

DEC 14 2005

CITY OF TIGARD

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

December 14, 2005

Via Email

Mayor Craig Dirksen
and Members of the Tigard City Council
City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

**Re: City of Tigard Zone Change Annexation Application;
File No. ZCA 2005-00004**

Dear Mayor Dirksen and Members of the City Council:

This office represents the applicant. This letter constitutes the applicant's submittal prior to the close of the second open record period on December 14, 2005 at 5:00 p.m.

The opponents submitted the following documents prior to the close of the first open record:

- City of Tigard, Oregon Resolution No. 93-64, a resolution of the City Council approving an intergovernmental agreement between the City and the Tigard Water District.
- "Rules, Rates and Regulations for Water Service" dated November, 1992 adopted by the Board of Commissioners for the Tigard Water District.
- A one-page submittal by Larry Derr entitled "Additional Record Submittal Fourth Annexation Issue."
- An email dated October 28, 2005 concerning consents to annexation.
- An annexation contract.

[37891-0029/PA053480.078]

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DENVER • HONG KONG • LOS ANGELES
MENLO PARK • OLYMPIA • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

December 14, 2005

Page 2

- One page from an article in the Portland Monthly dated March, 2005.
- One sheet entitled "Unfunded Street System Program Projects."
- A letter from Planner Gary Pagenstecher to Lester Carlson dated August 17, 2005 inquiring as to Mr. Carlson's interest in annexing to the City.
- An email from Lisa Hamilton-Treick to Larry Derr entitled "Mapping Vacancy" dated December 6, 2005 and containing an email from Jim Hendryx to Lisa Hamilton-Treick dated August 23, 2005.
- An email from Lisa Hamilton-Treick to Larry Derr dated December 6, 2005 and containing her email to Gus Duenas dated September 12, 2005.
- May 18, 2005 letter from Andrew Tull to the City of Tigard requesting a pre-application conference.
- City of Tigard pre-application conference notes with Andrew Tull dated June 2, 2005.
- Pre-application conference notes from the City of Tigard Engineering Section.
- A pre-application conference request form.
- Page 294 from the City of Tigard entitled "Traffic Impact Fee Fund No. 210" and subsequent pages.
- A newspaper article dated September 22, 2005.

The City Council held the record open at the opponents' request to allow them to address evidence concerning the availability of services pursuant to Tigard Comprehensive Plan Policies 10.1.1.a(1)-(6) and 10.1.2.c and Tigard Community Development Code Section 18.320.020.B. In addition, the City Council left the record open at the opponents' request to allow them to submit argument and evidence regarding the circumstances under which the affected property owners and applicant agreed to annexation. In response to this open record period, the opponents have submitted a substantial amount of irrelevant information without any information about how it is relevant to any applicable approval criterion or to the basis upon which the City Council left the record open.

December 14, 2005

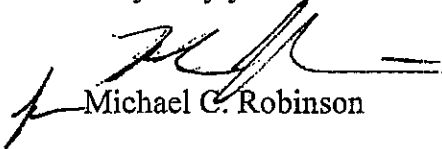
Page 3

Mr. Derr's one-page submittal contains no argument regarding the applicable Tigard Comprehensive Plan Policy or the applicable Tigard Community Development Code section which Mr. Derr requested the opportunity to address. Mr. Derr's argument boils down to the contention that the City may not withhold certain services in order to obtain the agreement of owners to annex. That may be an interesting argument in a case where involuntary annexation is required, but in this case, the substantial evidence in the whole record before the City Council is that the applicants *want* to annex to the City of Tigard.

The City Council can find that the argument in evidence, such as it is, submitted by opponents is irrelevant to the applicable approval criteria and does not warrant City Council agreeing with the opponents.

The applicant respectfully requests that the City approve the annexation application.

Very truly yours,



Michael C. Robinson

MCR:sv

cc: Mr. Gary Pagenstecher
Mr. Gary Firestone
Ms. Julie Journeay
Ms. Mimi Doukas
Mr. Andrew Tull
Marc E. Jolin, Esq.



Michael C. Robinson
PHONE: 503.727.2264
EMAIL: mrobinson@perkinscoie.com

RECEIVED PLANNING

DEC 15 2005

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

December 15, 2005

CITY OF TIGARD

VIA EMAIL

Mayor Craig Dirksen
Members of the City Council
City of Tigard
13125 SW Hall Blvd.
Tigard, Oregon 97223

**Re: Applicant's Final Argument in Support of City of Tigard Annexation
Application, File No. 2005-00004**

Dear Mayor Dirksen and Members of the City Council:

This office represents the Applicant and offers this letter as the Applicant's final argument in support of the above captioned annexation proposal.

The Applicant inquired with the City of Tigard's Planning Department today and was informed that the opponents did not submit any argument or evidence in rebuttal to the Applicant's submissions during the First Open Records Period. The evidence contained in those submissions is thus uncontroverted and Applicant will limit its final argument to two important points that are supported by substantial evidence in the record.

First, all of the required public services have adequate capacity to serve the annexation area. Tigard Comprehensive Plan policies 10.1.1a(1)-(6) and 10.1.2.e require a demonstration that there is adequate water, sewer, drainage, street, police and fire protection service available. Applicant has placed service provider letters and/or professional reports into the record demonstrating that each service has adequate capacity to serve the annexation area. There is not substantial evidence in the record to the contrary. Therefore, the City Council may find that these policies are satisfied.

[37891-0029/PA053490.061]

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DENVER • HONG KONG • LOS ANGELES
MENLO PARK • OLYMPIA • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Mayor Craig Dirksen
Members of the City Council
City of Tigard
December 15, 2005
Page 2

Second, the opponents' repeated objections to the consents to this annexation are simply without merit. The owners of the property to be annexed have all expressed their desire to be annexed to the City of Tigard. None have objected that their consent was involuntary or somehow coerced. Moreover, even if those affected by this annexation were not unanimously in favor of it, opponents' contention that the City's policy of conditioning the provision of extraterritorial services on consent to annexation is somehow a violation of the intergovernmental agreement between Washington County and the City of Tigard (the "IGA") is mistaken. Their argument rests on a misreading of that agreement and amounts to an impermissible collateral attack on its terms; the time for challenging the IGA's provision expressly permitting the City of Tigard to use all means allowed under the Oregon Revised Statutes to annex the Bull Mountain area expired long ago.

The Applicant appreciates very much the time that City Council, City Staff, and residents of the Bull Mountain community have dedicated to this annexation proposal. The record before the City Council contains substantial evidence that all of the applicable criteria for annexation have been satisfied. We therefore respectfully request that you approve the annexation.

Very truly yours,


Michael C. Robinson

cc: Ms. Julie Journeay (via email)
Mr. Andrew Tull (via email)
Ms Mimi Doukas (via email)
Mr. Rich Boyle (via email)
Mr. Tim Ramis (via email)
Mr. Gary Firestone (via email)
Mr. Gary Pagenstecher (via email)

MCR:mj